

IN RE:)
THE FILING OF PAPER ADMINISTRATIVE) GENERAL ORDER NO.: 3:05-MC-42
RECORDS OR SUPPLEMENTS IN)
SOCIAL SECURITY CASES AND ACTIONS)
FILED UNDER THE EMPLOYEE)
RETIREMENT INCOME SECURITY ACT)

THIS MATTER BEFORE THE COURT upon a matter of court administration. In light of the E-Government Act and the Privacy Act, and the requirements of Case Management/Electronic Case Files initiative of the Administrative Office of the United States Courts, and to further the congressionally mandated goals of increased efficiency in the administration of justice while preserving personal, financial, and medical privacy of litigants, the Court finds it necessary and appropriate to enter this Standing Protective Order to prevent inappropriate access to certain documents filed with the Court.

For cause, the Court finds that the extensive administrative records are filed in conjunction with appeals in Social Security matters under Title 42, Section 405 of the United States Code, and civil actions under the Employee Retirement Income Security Act (“ERISA”), Title 29, Section 1109 of the United States Code,. Due to the volume of such materials and the limitations of technology, such records will continue to be filed in paper form with the Clerk of this Court.

The Court further finds that such records contain highly sensitive personal, financial, and medical information of private citizens which, in other contexts, would be subject to redaction. For example, such information includes Social Security numbers, home addresses, personal telephone numbers, account numbers, medical records, and other information that has the potential to be exploited unlawfully.

The Court has carefully considered and balanced the public's right to access documents filed with the Court and the privacy interests of litigants, and determined that a Protective Order, coupled with a method for legitimate public access by way of motion and judicial review, is the least restrictive means to protect individual rights to privacy as provided in various statutes. Specifically, the Court has determined that redaction in such cases is impractical and would render the record unuseable for purposes of judicial review and that a blanket "Seal" would be overly protective and could intrude upon legitimate access. A Standing Protective Order, on the other hand, protects litigants' personal information and provides those who may have a legitimate need to review such materials an inexpensive avenue for disclosure.

Having found that a Standing Protective Order is the least restrictive means of protecting confidential information of litigants in Social Security and ERISA cases, the Court enters the following Standing Protective Order applicable to all Social Security and ERISA cases filed, prospectively, in this district:

ORDER

IT IS, THEREFORE, ORDERED that pursuant to Rules 26(c) and 83(b), Federal Rules of Civil Procedure, a **STANDING PROTECTIVE ORDER** is entered as to the administrative record and/or administrative transcript filed **IN PAPER FORM** in Social Security and Employee Retirement Income Security Act cases, as follows:

- (1) the above described paper records shall, prior to filing, be appropriately marked by the submitting party by placing on the front page or cover of any such submission the words "**Confidential, Subject to Protective Order;**"
- (2) after filing, and absent direction from a judge of the Court, the Clerk of this Court shall not be required to disclose, copy, scan, publish, or in any manner provide to any person such above described paper documents, except to a party of record, an attorney for a party of record, an authorized employee of an attorney of record, or an employee of the United States Courts;

- (3) a non-party may seek disclosure of any such protected documents through the filing a motion in the case, with a copy of this Order and the disclosure notice, properly served on all parties of record in accordance with Rule 5, Federal Rules of Civil Procedure, showing therein the non-party's particularized and legitimate need for such disclosure;
- (4) if disclosure is allowed to a non-party under paragraph three, such person will be required, as a condition precedent to such disclosure, to sign and return to the Clerk a confidentiality agreement bearing the caption of this case and stating in substantially the following form:

The undersigned has read and understands the Standing Protective Order under Rule 26 for the protection of confidential information entered in this case and agrees (1) that he/she shall fully abide by the restrictions on disclosure and use therein; (2) that he/she shall not disclose or use said information or discuss it with any person not authorized to receive the same or not specifically allowed by an Order of this Court; (3) that he/she shall not use said confidential information for any purpose other than for the purposes of this litigation or for some other purpose as may be provided by the Order of this Court; and (4) that he/she hereby submits himself/herself to the jurisdiction of this Court to enforce this agreement.

Signed,

Name of Recipient

- (5) These restrictions shall not terminate with the litigation, but shall continue until further order of the Court; provided however, that this Order shall not have any retroactive force and effect, shall not be construed as providing any person or party with any rights other than those provided by statute, shall not be construed to prevent any party or counsel from making use of information which, as evidenced by written records, was lawfully in its possession or later lawfully came into its possession; is or was public knowledge at the time of or prior to disclosure hereunder; or becomes

public knowledge through no fault of receiving counsel or the receiving persons during the course of the litigation;

- (6) Nothing herein shall be construed as to prevent parties to such Social Security or ERISA actions from arguing, citing, excerpting, or attaching portions of any such transcript to their pleadings and memoranda; and
- (7) Nothing herein shall prejudice the right of any party to apply to the Court for relief from the terms of this Order, upon good cause shown, or to seek an Order to extend, modify, or limit the application of this Order.

IT IS SO ORDERED, this 21st day of April, 2005.



Graham C. Mullen
Chief United States District Judge



Richard L. Voorhees
United States District Judge



Lacy H. Thornburg
United States District Judge

